

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 28. Briefs

(a) **Appellant's Brief.** The appellant's brief must contain, under appropriate headings ~~and in the order indicated:~~

- (1) a corporate disclosure statement if required by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;
- (4) a jurisdictional statement, including:
 - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
 - (C) the filing dates establishing the timeliness of the appeal or petition for review; and
 - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;
- (5) a statement of the issues presented for review;
- (6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
- (7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (see Rule 28(e));
- (8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
- (9) the argument, which must contain:
 - (A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and
 - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

FEDERAL CIRCUIT RULE

Rule 28. Briefs

(a) **Contents of Brief; Organization of Contents; Addendum; Binding.** Briefs must be bound as prescribed in Federal Circuit Rule 32(b), and must contain the following in the order listed:

- (1) The certificate of interest (see Federal Circuit Rule 47.4).
- (2) The table of contents.
- (3) The table of authorities.
- (4) The statement of related cases (see Federal Circuit Rule 47.5).
- (5) The jurisdictional statement.
- (6) The statement of the issues.
- (7) The statement of the case, including the citation of any published decision of the trial tribunal in the proceedings.
- (8) The statement of the facts.
- (9) The summary of the argument.
- (10) The argument, including statement of the standard of review.
- (11) The conclusion and statement of relief sought.
- (12) The judgment, order, or decision in question, and any opinion, memorandum, or findings and conclusions supporting it, as an addendum placed last within the initial brief of the appellant or petitioner. This requirement is met when the appendix is bound with the brief. (See Federal Circuit Rule 30(c)(1) and (d) for a duplicative requirement of the appendix.) Additionally, in an appeal involving a patent, the patent in suit may be included within the addendum of the initial brief and, if included, must be reproduced in its entirety. (See Federal Circuit Rule 30(a)(3) for a requirement that the patent in suit be included in its entirety in the appendix.)
- (13) The proof of service (see Federal Rule of Appellate Procedure 25(d)).
- (14) The certificate of compliance, if required by Federal Rule of Appellate Procedure 32(a)(7).

(b) **Appellee's Jurisdictional Statement and Statements of the Issues, the Case, the Facts, and the Standard of Review.** The appellee's jurisdictional statement and statements of the issues, the case, the facts, and the standard of review must be limited to specific areas of disagreement with those of the appellant. Absent disagreement, the appellee must not include any of those statements. The statement of the case must

FEDERAL RULES OF APPELLATE PROCEDURE

- (10) a short conclusion stating the precise relief sought; and
- (11) the certificate of compliance, if required by Rule 32(a)(7).
- (b) Appellee's Brief.** The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:
- (1) the jurisdictional statement;
 - (2) the statement of the issues;
 - (3) the statement of the case;
 - (4) the statement of the facts; and
 - (5) the statement of the standard of review.
- (c) Reply Brief.** The appellant may file a brief in reply to the appellee's brief. An appellee who has cross-appealed may file a brief in reply to the appellant's response to the issues presented by the cross-appeal. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.
- (d) References to Parties.** In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."
- (e) References to the Record.** References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. ~~If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:~~
- Answer p. 7;
 - Motion for Judgment p. 2;
 - Transcript p. 231.
- Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and re-

FEDERAL CIRCUIT RULE

include the citation of any published decision of the trial tribunal in the proceedings that is not included in the appellant's statement of the case.

- (1) The jurisdictional statement.
 - (2) The statement of the issues.
 - (3) The statement of the case. Appellee's statement of the case must include the citation to any published decision of the trial tribunal in the proceedings that is not included in the appellant's statement of the case.
 - (4) The statement of the facts.
 - (5) The statement of the standard of review.
- (c) Motion to File Extended Brief.** The court looks with disfavor on a motion to file an extended brief and grants it only for extraordinary reasons. Unless the order granting a motion to file an extended brief provides otherwise, when additional pages are allowed in the principal brief of an appellant or cross-appellant, a responsive brief permitted by the rules may contain the same number of additional pages.
- (d) Briefs Containing Material Subject to a Protective Order.**
- (1) **Two Sets of Briefs.** If a party refers in a brief to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of briefs must be filed.
 - (A) Confidential set; labeling; number of copies. One set of briefs, consisting of the original and eleven copies, must be labeled "confidential" and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., "CONFIDENTIAL UNTIL [DATE]," or "CONFIDENTIAL DURING JUDICIAL REVIEW." Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.
 - (B) Nonconfidential set; labeling; number of copies. The second set of briefs, consisting of the original and three copies from which confidential matter has been deleted, must be labeled "nonconfidential" and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The table of contents of a nonconfidential brief must describe the general nature of the confidential material that has been deleted.

FEDERAL RULES OF APPELLATE PROCEDURE

ceived or rejected.

- (f) **Reproduction of Statutes, Rules, Regulations, etc.** If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.
- (g) **[Reserved]**
- (h) **Briefs in a Case Involving a Cross-Appeal.** If a cross-appeal is filed, the party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30, 31, and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by agreement of the parties or by court order. With respect to appellee's cross-appeal and response to appellant's brief, appellee's brief must conform to the requirements of Rule 28(a)(1)-(11). But an appellee who is satisfied with appellant's statement need not include a statement of the case or of the facts.
- (i) **Briefs in a Case Involving Multiple Appellants or Appellees.** In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.
- (j) **Citation of Supplemental Authorities.** If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before decision — a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state without argument the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. Any response must be made promptly and must be similarly limited.

FEDERAL CIRCUIT RULE

- (2) **Service.** Each party to the appeal must be served two copies of the nonconfidential brief and, when permitted by the applicable protective order, two copies of the confidential brief.
- (3) **Availability to the Public.** The confidential briefs will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceeding in the court, the parties may be directed to show cause why confidential briefs (except those protected by statute) should not be made available to the public.
- (e) **Citations.** Opinions of this court and its predecessors should be cited as found in the Federal Reporter and, if reasonably available, the United States Patents Quarterly. Parallel citations to any other reporters are discouraged. Examples of acceptable citations are:

Guotos v. United States, 552 F.2d 992 (Ct. Cl, 1976).
 In re Sponnable, 405 F.2d 578, 160 USPQ 237 (CCPA 1969).
 South Corporation v. United States, 690 F.2d 1368, 215 USPQ 657 (Fed. Cir. 1982)(en banc).
 Doe v. Roe, No. 12-345, slip op. (Fed. Cir. Oct. 1, 1982).
- (f) **Reference to Appendix.** Reference in the brief to pages of the joint appendix and, if permitted, of a supplemental appendix must be as short as possible consistent with clarity, e.g., A206 or SA17.
- (g) **Briefs in a Case Involving a Cross-Appeal.** If a cross-appeal is filed, the party who is the appellant under Federal Rule of Appellate Procedure 28(h) is the appellant for purposes of these Federal Circuit Rules.
- (h) **Citation of Supplemental Authority; Response.** A party filing a citation of supplemental authority must file an original and 6 copies of a letter addressed to the clerk, and must serve all other parties in accordance with Federal Rule of Appellate Procedure 25 and Federal Circuit Rule 25. The letter must refer to a page of the brief or to a point raised in oral argument and must state in a single sentence the proposition the authority supports. It must contain no other argument or explanation. A copy of the authority cited, if not yet published, must accompany each copy of the letter. Any response must be filed and served within 7 days of service and must be limited to a short statement why the authority is considered inapplicable.
- (i) **Informal Brief; Appellee's Brief.** A pro se party may file an informal brief on the form prescribed by the court. When the appellant or petitioner files an informal brief, the appellee or respondent may file an informal brief. An

informal brief filed by an appellee must contain a statement of the case but otherwise follow the format prescribed for the pro se party.

- (j) **Briefs in a Transferred Case.** When an appeal is transferred to this court by another court of appeals after briefs have been filed, the parties may stipulate to proceed on those briefs instead of filing briefs prescribed by these rules. The stipulation must be filed within 14 days of docketing, and the number of copies of briefs required by Federal Circuit Rule 31(b) must accompany the stipulation. The court may order supplemental briefs.

Practice Notes

Informal Brief. The informal brief procedure is explained in the Guide for Pro Se Petitioners and Appellants.

Describing the General Nature of Confidential Material Deleted from the Nonconfidential Brief. The following example is acceptable:

CONFIDENTIAL MATERIAL OMITTED

The material omitted on page 42 describes the circumstances of an alleged lost sale; the material omitted in the first line of page 43 indicates the dollar amount of an alleged revenue loss; the material omitted on page 44 indicates the quantity of the party's inventory and its market share; the material omitted in the text on page 45 describes the distributor's experiences concerning the inventories and order lead times; and the material omitted in the footnote on page 45 describes non-price factors affecting customers' preferences between competing methods.

Rule 29. Brief of an Amicus Curiae

- (a) **When Permitted.** The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.
- (b) **Motion for Leave to File.** The motion must be accompanied by the proposed brief and state:
- (1) the movant's interest; and
 - (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.
- (c) **Contents and Form.** An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmation or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that

Rule 29. Brief of an Amicus Curiae

- (a) **Content; Form.** In addition to the contents required by of Federal Rule of Appellate Procedure 29, the brief of an amicus curiae must include a certificate of interest (see Federal Circuit Rule 47.4) in front of the table of contents.
- (b) **List of Amicus Curiae.** The clerk will maintain a list of bar associations and other organizations to be invited to file amicus curiae briefs when the court directs. Bar associations and other organizations will be placed on the list if they request. The request must be renewed annually not later than October 1.